NOTES OF CASES.

The Barren May Bear Fruit.—A most unusual basis for a new trial is developed in Anshutz *v.* Louisville Ry. Co., 154 Southwestern Reporter, 13, which may be either a reflection on the wisdom of the science of medicine and surgery or simply the prowess of woman to baffle all. In April, 1910, Lillian Anshutz, a young married woman 23 years of age, was injured while a passenger on a railroad car. At the time of the accident she was enceinte, and shortly thereafter there was born to her a boy baby. In April, 1911, she was taken to a hospital, where a serious operation was performed upon her, at which time it is shown by several physicians and surgeons who were present that there was removed from her body both Fallopian tubes, the whole of the left ovary, and part of the right ovary. Thereafter she sued the railroad company. Previous to the trial the court appointed a surgeon to examine the woman as to the nature and extent of her injuries. On the trial all the physicians and surgeons testified as to the nature of the operation, and, in addition, that by reason thereof Mrs. Anshutz was made barren and could never have another child. They further stated that there had developed a tumor in her abdomen, which would sooner or later necessitate still another, and possibly more serious, operation. The physician appointed by the court testified, in substance, to the same thing. The jury rendered a verdict for $7,000 for the plaintiff. Defendant asks for a new trial—for wonders will never cease: On the 3d day of June, 1912, Mrs. Anshutz gave birth to another boy baby. "Welcome, infant," saith the railroad company; "and now we should have a new trial, for it has been proven, out of court, that the woman is not barren and that what was said to be a tumor was in fact a fœtus, and, instead of a future operation which would endanger her life, nature has asserted itself and brought about the usual satisfactory results without permanent injury, notwithstanding it was proven otherwise in court, and must have had a controlling influence upon the jury in fixing the amount of the recovery." The Court of Appeals of Kentucky holds that the railroad company is entitled to a new trial because of this newly discovered evidence, in part saying: "No reflection is intended upon the physicians and surgeons who testified. Either there was some strange and unaccountable mistake, or one of those freakish things in nature has happened which are so rare as that they are said by scientific people to be impossible."

Constitutional Law—Municipal Corporations—Police Powers—Segregation of Races—Impairment of Obligation of Contract.—State *v.* Gurry (Court of Appeals of Maryland, Aug. 5, 1913), 88 Atl. Rep.

228. A municipality can, in the exercise of its police power, pass an ordinance segregating the white and colored races without violation of the Constitution of the United States or of this State, provided such ordinance affords protection to persons who may have acquired a legal right to occupy as a residence any building by devise, descent, purchase, lease, or other valid contract at the time of the passage of the ordinance.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 426-428, 442-444, 447-455, 458, 459, 461-473; Dec. Dig. § 154; Municipal Corporations, Cent. Dig. §§ 1316-1320, 1327, 1328; Dec. Dig. § 594. 3 Va.-W. Va. Enc. Dig. 202, 231.]

Appeal from Criminal Court of Baltimore City; Thos. Ireland Elliott, Judge.

John H. Gurry was convicted of a crime, and he appeals. Affirmed.

William L. Marbury, S. S. Field, and Edgar Allan Poe, all of Baltimore, for appellant. C. Ames Brooks, of New York City, and W. A. Hawkins, of Baltimore, for the State.

Per curium. The judgment of the criminal court of Baltimore in the above case will be affirmed; an opinion embodying the reasons for this conclusion will be hereafter filed.

This court is of opinion that the mayor and city council of Baltimore may, in the exercise of its police power, validly pass an ordinance for the segregation of the white and colored races without conflicting with the provisions of the Constitution of the United States or of the state of Maryland, but that the ordinance No. 692, approved May 15, 1911, cannot be sustained, inasmuch, among other reasons, as it omits to afford any proper protection for persons who may have acquired a legal right to occupy, as residents, any building or portion thereof by devise, descent, purchase, lease, or other valid legal contract at the time of the passage of the ordinance.

Note.—This case is of peculiar interest to the members of the Virginia Bar and to the public at large at this time, similar ordinances having been passed by several of our municipalities and the advisability of passing such ordinances being considered by many more. In the October LAW REGISTER, p. 427, we published the opinion of Judge R. H. L. Chichester in the case of Ashland *v.* Coleman, upholding the constitutionality of such an ordinance. This case, however, is the first one involving the constitutionality of such ordinances when applied to places of residence which has been passed upon by a court of last resort, the Maryland court holding, as did Judge Chichester, that a municipality has the power to pass such ordinances providing they do not affect rental contracts existing at the time of its passage nor divest any person of his property or rights therein as they existed at the time of its passage. The Baltimore

ordinance violated this exception and was declared unconstitutional but the power of municipalities to pass such ordinances when properly drawn was clearly held. In a leading article by Mr. James F. Minor, published in vol. 13, p. 561, of the VIRGINIA LAW REGISTER, this subject is exhaustively treated.

Statement of the ownership, management, etc., of VIRGINIA LAW REGISTER, published monthly at Charlottesville, Virginia, required by the Act of August 24, 1912.

Editor: R. T. W. Duke, Jr., Charlottesville, Va.

Publishers and Owners: The Michie Company, a corporation, Charlottesville, Va.

Names and addresses of stockholders holding 1 per cent or more of total amount of stock: T. J. Michie, Charlottesville, Va.; G. R. B. Michie, Charlottesville, Va.; A. R. Michie, Charlottesville, Va.; J. M. White's Executors, Charlottesville, Va.; Dr. W. D. Macon, Charlottesville, Va.; H. Robertson, Jr., Danville, Va.; Virginia Trust Company and H. Robertson, Jr., Administrators and Trustees, Richmond and Danville, Va.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities: G. Taylor Gwathmey, Trustee Cabell, Norfolk, Va.; Virginia Trust Company and H. Robertson, Jr., Administrators and Trustees, Richmond and Danville, Va.; Helen Rawlings, Charlottesville, Va.; Mrs. C. L. Pace, Charlottesville, Va.

GEORGE R. B. MICHIE,
Manager and Treasurer.

Sworn to and subscribed before me this 26th day of September, 1913.

C. D. FISHBURNE, JR.,
[SEAL] *Notary Public.*

My commission expires July 8th, 1915.